

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 1466 – HB 1731**

January 24, 2016

**SUMMARY OF BILL:** Authorizes the Commissioner of the Department of Health (DOH) to license pain management clinics and assess penalties for licensure violations. Establishes annual reporting requirements from the medical director of each pain clinic to include the number of physician assistants and advanced practice nurses who are working in the clinic for each month; the number of pain patients seen by the clinic each month; the number of patients treated who have overdosed; the number of patients being treated for pain that have died during the year; whether the pain clinic is part of or associated with a hospital; and the number of morphine milligram equivalent daily doses per patient per clinic. Creates conditions under which the license may be revoked or suspended. If the deficiency causing the revocation or suspension threatens serious harm to the patients of the clinic, the Commissioner will appoint one or more special monitors to observe the operation of the clinic and periodically submit written reports to the Commissioner on the operations. Establishes that the clinic will be liable for the costs of special monitors, unless the Commissioner retains a monitor in a clinic after correction to evaluate the clinic's continued compliance.

Requires, on or after January 1, 2017, all pain management clinics to obtain a license from the department and to register with the state as a certificate holder. Authorizes DOH to charge a reasonable fee for any application for a license or certificate. Creates a Class A misdemeanor for an entity or person who operates a pain management clinic without a license. Requires the DOH to inspect each clinic prior to issuance of a license and at least one time each year. Requires the Board of Medical Examiners and the Board of Osteopathic Examination to contract with DOH to annually inspect pain management clinics, and to pay for the expenses of the inspections to the DOH out of reserves in the accounts maintained for the boards.

Prohibits an owner or operator of a pain management clinic from locating or participating in locating a pharmacy adjacent to the location of the clinic if the owner or operator has an ownership interest in the location. Requires a medical director to be on-site at least 50 percent, instead of 20 percent, of the clinic's weekly total number of operating hours.

Adds "pain management clinic", as defined under Tenn. Code Ann. § 63-1-301, to the definition of a health care institution and requires a certificate of need (CON) to operate a clinic. Requires the State Health Planning Division to consult with the Bureau of TennCare, the Department of Health, and the Department of Mental Health and Substance Abuse Services to develop appropriate criteria for evaluating an application for a certificate of need for a pain management clinic.

## **ESTIMATED FISCAL IMPACT:**

**Increase State Revenue – Exceeds \$970,100/FY16-17**  
**Exceeds \$929,800/FY17-18 and Subsequent Years**

**Increase State Expenditures – Exceeds \$970,100/FY16-17**  
**Exceeds \$929,800/FY17-18 and Subsequent Years**

### **Assumptions:**

- Based on information provided by the DOH, the increase in hours for inspection, discovery and enforcement of violations and issuance of certificate requirements cannot be performed within existing resources.
- The department will need to hire the following eight additional staff members to meet the requirement of the bill: one Physician to serve as the Program Director; one Administrative Services Assistant 3; three Public Health Nursing Consultants to be located in the three grand divisions of the State to perform the required inspections; one Attorney 4; and two Statistical Research Specialists to perform the necessary tasks associated with the CON.
- The one-time increase in state expenditures associated with additional positions is estimated to be \$40,300 (\$18,700 computer setup + \$21,600 office furniture).
- The recurring increase in state expenditures associated with the additional positions is estimated to be \$921,417 (\$652,152 salaries + \$200,265 benefits + \$12,800 communications + \$4,800 supplies + \$51,400 travel expenses).
- If a deficiency causing the revocation or suspension of a clinic's license threatens serious harm to the patients of the clinic, the Commissioner will appoint one or more special monitors to observe the operation of the clinic and periodically submit written reports to the Commissioner on the operations. It is unknown how many will occur throughout the process to correct any deficiencies. All expenses incurred for continued monitoring during the correction process are to be borne by the facility; therefore, the fiscal impact to the department for such monitoring will not be significant.
- If DOH retains a monitor in a clinic after correction to evaluate the clinic's continued compliance, the department is responsible for any incurred expenses. It is estimated there will be at least three instances a year in which DOH chooses to retain a monitor. The recurring increase in state expenditures associated with the cost of such monitors is estimated to be at a minimum \$8,400 (80 hours of monitoring per case x \$35 per hour x 3 cases per year).
- The total increase in state expenditures in FY16-17 is estimated to exceed \$970,117 (\$40,300 + \$921,417 + \$8,400); in FY17-18 and subsequent years is estimated to exceed \$929,817 (\$921,417 + \$8,400).
- DOH is authorized to charge a reasonable fee for any application for a license or certificate. Based on information provided by DOH, it is estimated that the Department will charge sufficient fees to offset the expenditures incurred to accomplish the requirements of the proposed legislation. As a result, the total increase in state revenue is

estimated to exceed \$970,117 in FY16-17 and \$929,817 in FY17-18 and subsequent years.

- The Bureau of TennCare, the Department of Health, and the Department of Mental Health and Substance Abuse Services are directed to develop appropriate criteria for evaluating an application for a certificate of need for a pain management clinic. Any fiscal impact incurred during this process will be not significant.
- There will not be a sufficient number of prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- Pursuant to Tenn. Code Ann. § 4-29-121, all health related boards are required to be self-supporting over any two year period. The Board of Medical Examiners had a deficit of \$75,431 in FY13-14, a surplus of \$359,446 in FY14-15, and a cumulative reserve balance of \$2,725,411 on June 30, 2015. The Board of Osteopathic Examination had a surplus of \$94,728 in FY13-14, a surplus of \$72,782 in FY14-15, and a cumulative reserve balance of \$614,410 on June 30, 2015.

### **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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